

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BETTY TILTON,)	1:02cv5252 DLB
)	
)	
Plaintiff,)	ORDER REGARDING
)	PETITION FOR FEES
v.)	(Document 20)
)	
JO ANNE B. BARNHART, Commissioner)	
of Social Security)	
)	
Defendant.)	

Petitioner Joel D. Leidner (“Counsel”), counsel for Plaintiff Betty Tilton (“Plaintiff”), filed the instant petition for fees on February 3, 2006. Counsel requests fees in the net amount of \$7,776.05 pursuant to 42 U.S.C. § 406(b). Although Plaintiff was served with a copy of the petition, she did not file an opposition.

BACKGROUND

Plaintiff filed her social security complaint on May 7, 2002. Pursuant to the parties’ stipulation, the Court remanded the action on September 16, 2003.

On October 9, 2003, the Court ordered payment of attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”) in the amount of \$4,000.00.

On remand, a new hearing was held and the ALJ issued a fully favorable decision, finding that Plaintiff had been under a disability since January 1, 1993 and awarding a period of disability and disability insurance benefits commencing on that date. Plaintiff received a gross

total of \$75,104.20 in retroactive benefits. Of this amount, \$18,776.05 was withheld for payment of attorney's fees. This amount represented 25 percent of the total past-due benefits award.

On January 17, 2006, the ALJ authorized Counsel to charge and collect a fee of \$7,000.00 for work performed on Plaintiff's behalf before the Social Security Administration.

By this motion, Counsel seeks an award of \$18,776.05 for services provided before this Court. After crediting Counsel's award of \$7,000.00 for work performed before the Administration and EAJA fee award of \$4,000.00, Counsel seeks a net award of \$7,776.05.

DISCUSSION

42 U.S.C. § 406(b)(1)(A) provides in relevant part:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment . . .

In *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002), the Supreme Court explained that a district court reviews a petition for section 406(b) fees "as an independent check" to assure that contingency fee agreements between claimants and their attorneys will "yield reasonable results in particular cases." Agreements are not enforceable to the extent that they provide for fees exceeding 25 percent of the past-due benefits. *Id.* "Within the 25 percent boundary. . . the attorney for the successful claimant must show that the fee sought is reasonable for the services rendered." *Id.*

In determining the reasonableness of an award, the district court should consider the character of the representation and the results achieved. *Id.* Ultimately, an award of section 406(b) fees is offset by an award of attorney's fees granted under the EAJA. 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796.

Here, Counsel and Plaintiff agreed upon a contingent fee of 25 percent of past due benefits. Exhibit C, attached to Petition. Counsel's net request of \$7,776.05 does not exceed the statutory limit. 42 U.S.C. § 406(b)(1)(A).

Counsel spent 31.25 hours representing Plaintiff before this Court. Exhibit F, attached to Petition. Using the net request, this translates into an hourly rate of \$248.83 ($\$7,776.05 \div 31.25$).

1 The Court finds this to be a reasonable rate in recognition of the contingent nature of this case
2 and Counsel's assumption of the risk of going uncompensated. *Hearn v. Barnhart*, 262
3 F.Supp.1033, 1037 (N.D. Cal. 2003). Therefore, the Court awards attorney's fees in the amount
4 of \$7,776.05.

5 Accordingly, Counsel's petition for fees is GRANTED in the net amount of \$7,776.05.

6
7 IT IS SO ORDERED.

8 **Dated: March 27, 2006**
9 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE